

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

Court of Appeals, District of Columbia

OCTOBER TERM, 1907.

No. 1844

525

No. 16, SPECIAL CALENDAR

DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

vs.

CHARLES ROBINSON.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA

FILED NOVEMBER 21, 1907.

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1907

No. 1844

No. 16, SPECIAL CALENDAR

DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

v's.

CHARLES ROBINSON.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 1844.

No. 16 Special Calendar.

DISTRICT OF COLUMBIA, Plaintiff in Error,

v's.

CHARLES ROBINSON.

"

No. 308,749

In the Police Court of the District of Columbia.

November Term, 1907.

DISTRICT OF COLUMBIA

v's.

CHARLES ROBINSON

Information for Violation of Sunday Law

Be it remembered, That in the Police Court of the District of Columbia, at the City of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit :

1 In the Police Court of the District of Columbia.

The District of Columbia, ss: July term, A. D. 1907

Edward H. Thomas, Esq., Corporation Counsel, by James L. Pugh, Jr., Esq., Assisiant Corporation Counsel, who for the District of Columbia prosecutes in this behalf in his proper person, comes here into court, and causes the court to be informed, and complains that Charles Robinson, late of the District of Columbia aforesaid, on the twenty-first day of July, in the year A. D. nineteen hundred and seven, in the District of Columbia aforesaid, and in the City of Washington, on — street, avenue, alley, north, south, west, east, did then and there work on said day being Sunday ; contrary to and in violation of Act of the Maryland Legisla-

ture approved 1723, Chapter 16, Section 10, and constituting a law of the District of Columbia.

EDWARD H. THOMAS,
Corporation Counsel,

By JAMES L. PUGH, JR.,
Assistant Corporation Counsel.

Personally appeared T. D. Walsh this 30th day of July, A. D. 1907, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

L. F. ENGBESBY,
Deputy Clerk Police Court of the District of Columbia.

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(Demurrer to the Information)

In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA

vs.

CHARLES ROBINSON.

No. 308,749.

Now comes the defendant, by his attorney, Edward S. Duvall, Jr., and by leave of the Court for the purpose first asked and obtained, withdraws the plea of not guilty and says that the information in the above entitled cause is bad in substance.

EDWARD S. DUVALL, JR.
Attorney for the Defendant.

Note: Among the points to be argued in support of the foregoing demurrer, are : —

1. The United States and not the District of Columbia, should be named as party plaintiff, if the act of the Maryland Legislature approved 1723, Chapter 16, Section X, is held to be in force and effect in the District of Columbia, as all fines, penalties, and forfeitures accruing under the laws of the State of Maryland, continued in force in this District, are recoverable by indictment or information, in the name of the United States only.

2. That if the said act of the Maryland legislature is continued in force in this District, the penalty or forfeiture fixed therein is indeterminate and the said act invalid.

3. That the said act of the Maryland legislature has never been enforced in this District and by disuse has become obsolete.

4. That the said information does not specify any act or acts constituting work committed by the defendant on the said 21st

day of July, 1907, being Sunday, and the averment "did then and there work on said day" is not sufficient to support the said information.

5. Said information contains no averment that the work alleged therein was not a work of necessity or charity and the same is necessary to support the said information.

6. That the said act of the Maryland legislature approved A. D. 1723, Chapter 16, Section X, under which the information in this case is brought, was repealed in the District of Columbia by the act of March 3d, 1901, of Congress, entitled "An Act to establish a code of law for the District of Columbia."

7. That the said information charges no offense on the part of the defendant against the laws in force in the District of Columbia. And other good and sufficient grounds.

4

Bill of Exceptions.

In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA

v's.

CHARLES ROBINSON

No. 308,749.

Be it remembered that at the trial of this cause, which came on for a hearing on the fifth day of November, A. D. 1907, before the Honorable ALEXANDER R. MULLOWNY, one of the Judges of the Police Court of the District of Columbia, the defendant, by his counsel, Edward S. Duvall, Jr., Esquire, by leave of the Court first asked and obtained, withdrew his plea of not guilty and interposed a demurrer to the information filed in said cause upon the following grounds, to wit:

1. The United States and not the District of Columbia, should be named as party plaintiff, if the Act of the Maryland Legislature approved 1723, Chapter 16, Section X, is held to be in force and effect in the District of Columbia, as all fines, penalties, and forfeitures accruing under the laws of the State of Maryland, continued in force in this District, are recoverable by indictment or information, in the name of the United States only.

2. That if the said act of the Maryland legislature is continued in force in this District, the penalty or forfeiture fixed therein is indeterminate and the said act invalid.

3. That the said act of the Maryland legislature has never been enforced in this District and by disuse has been obsolete.

4. That the said information does not specify any act or acts

constituting work committed by the defendant on the said 21st day of July, 1907, being Sunday, and the averment "did then and there work on said day" is not sufficient to support the said information.

5. Said information contains no averment that the work alleged therein was not a work of necessity or charity and the same is necessary to support the said information.

5 6. That the said act of the Maryland legislature approved A. D. 1723, Chapter 16, Section X, under which the information in this case is brought, was repealed in the District of Columbia by the act of March 3d, 1901, of Congress entitled "An Act to establish a code of law for the District of Columbia."

7. That the said information charges no offense on the part of the defendant against the laws in force in the District of Columbia. And other good and sufficient grounds.

After hearing argument of counsel on said motion the Court ruled as matter of law:

1st. That the prosecution should have been brought in the name of the United States and not in the name of the District of Columbia for the reason that Section 837 of the Revised Statutes relating to the District of Columbia declares that: "all fines, penalties and forfeits accruing under the laws of the State of Maryland, which by adoption have become the laws of this District shall be recovered with costs by indictment or information in the name of the United States".

2nd. That the information is bad in substance in that it fails to negative that the work done was "a work of necessity or charity". This exception being a part of the definition of the offense must be negatived and alleged in the information

3rd. That inasmuch as Congress has from time to time enacted laws on the subject of Sabbath * breaking said Act of the Maryland legislature is repealed by implication and may be declared invalid on the ground of its long disuse.

The demurrer is therefore sustained and the defendant discharged.

Whereupon counsel for the District of Columbia excepted to said rulings of the Court, which said exceptions were duly
6 noted by the Court upon his minutes, and thereupon the District of Columbia, by its Counsel, gave notice in open Court at the time of said rulings of its intention to apply to a Justice of the Court of Appeals of the District of Columbia for a writ of error.

The District of Columbia, by its Counsel, therefore prays the Court to settle, sign and seal this its bill of exceptions, which is accordingly done now for then this 7th day of November, A. D. 1907.

ALEX. R. MULLOWNEY,
Judge of the Police Court of the District of Columbia.

7 In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA

vs.

CHARLES ROBINSON.

No. 308,749.

Opinion of Judge A. R. Mulloony, Police Court of the District of Columbia.

OPINION: This is a hearing on a demurrer to an information filed in the name of the District of Columbia against one Charles Robinson, charging him with violation of an act of the Maryland Legislature passed in 1723 (1 Kilty, page 180) and incorporated as a law of this District by act of Congress approved February 27, 1801, and known as Section 92 Revised Statutes, D. C. "Laws of the State of Maryland not inconsistent with this title, as the same existed on the 27th day of February, 1801, except as since modified or repealed by Congress or by authority thereof or until so modified or repealed continue in force within the District."

I have examined the section of the act in question and find that every subject of the section in question has been legislated upon directly by different acts of Congress. The section in question: "That no person whatsoever shall work or do any bodily labor on the Lord's Day. (works of necessity and charity always excepted,) nor shall suffer or permit any children, servants or slaves, to profane the Lord's day by gaming, fishing, fowling, hunting, or unlawful pastimes or recreations; and that every person transgressing this act, and being thereof convict by the oath of one sufficient witness, or confession of the party before a single magistrate, shall forfeit two hundred pounds of tobacco, to be levied and applied as aforesaid."

Upon the subject of gaming by Section 865 and 866, Code D. C. Congress has not only prohibited all kinds of gaming on Sunday, but on every other day. On the subject of hunting, fishing and fowling by sections 896 and 897 of the Code D. C., and by act of Congress approved March 3, 1899, Revised Statutes U. S. Volume 30, page 1012—it prohibits hunting and fishing upon certain specified times of the year and prohibits by Section 7 of said act: "there shall be no shooting, or having in possession in the open air the implements of shooting, on the First day of the week called Sunday", etc.

8 In regard to pastimes and recreations. In legislating upon baseball, boat racing or contests of any kind, simply prohibits, by Section 869 of the Code, the betting upon said games in the City of Washington.

On the subject of labor by Section 892 of the Code, D. C., Congress simply declared that eight hours shall constitute a day's labor in any one calendar day, except in cases of extraordinary emergency.

It seems to me, therefore, if Congress had intended these different acts to be unlawful on Sunday, it would have been an easy matter when they had these subjects before them to have specifically said so. While repeals by implication are not favored by the Courts, yet, it seems to me—taking all these acts together the section in question has been so modified that it is impliedly repealed. The Encyclopaedia of Law, 1st Edition, Vol. 23, page 475, in the text declares that: "long disuse may in effect operate as a repeal of a statute, but strong evidence as to its disuse is required;" and cites numerous authorities in its support. The statute has been apparently in force for over one hundred years, but I can find no reported case of a prosecution under it, nor do I know of any in the inferior courts. (Prosecuting Attorney Pugh interrupted the Court and stated: "there has been none.") It seems, therefore, that this statute may be declared invalid on the ground of its disuse.

There seems to be no doubt that this prosecution is improperly brought—for the information is filed in the name of the District of Columbia and prosecuted by its Assistant Corporation Counsel. Whereas Section 837 of the Revised Statutes, D. C., declares that:

9 "all fines, penalties and forfeits accruing under the laws of the State of Maryland, which by adoption have become the laws of this District, shall be recovered with costs by indictment or information in the name of the United States." In *Dempsey versus District of Columbia*, Volume 1 Appeals, D. C., page 69, in its opinion the Court says: "It is true that Congress might possibly have directed the Attorney for the District of Columbia to proceed in the name of the United States. But unless it did so specifically and by express direction it would manifestly be improper for him to assume to proceed in the name of the United States."

The information fails to negative that the work done was not "a work of necessity or charity"—this exception being a part of the definition of the offense must be negated and alleged in the information.

For these reasons I am, therefore, of the opinion that this demurrer must be sustained, and by virtue of which the defendant is discharged.

ALEX. R. MULLOWNY,
Judge, Police Court.

10

(Copy of Docket Entries)

In the Police Court of the District of Columbia.

July Term, A. D. 1907.

DISTRICT OF COLUMBIA

vs.

CHARLES ROBINSON

Information for Violation of Sunday Law

Defendant arraigned Wednesday, July 31, 1907. Plea: Not guilty. Jury trial demanded. Continued indefinitely. Recognizance in the sum of one hundred dollars entered into to appear in the Police Court, John H. Houser, surety.

Aug. 2, 1907: Leave granted by the Court to withdraw plea and file demurrer to the information. Plea of not guilty withdrawn by leave of the Court and demurrer to the information filed by the defendant. Continued to November 5, 1907.

Nov. 5, 1907: Demurrer to the information argued and sustained. Defendant discharged. Exceptions taken to the rulings of the Court on matters of law and notice given by the District of Columbia through the Assistant Corporation Counsel in open Court, at the time of the several rulings, of its intention to apply to a Justice of the Court of Appeals of the District of Columbia for a writ of error. Thereupon proceeding stayed for ten days.

Opinion of Court filed.

Nov. 7, 1907: Bill of exceptions filed, settled and signed.

Nov. 16, 1907: Writ of error received from the Court of Appeals of the District of Columbia.

11 In the Police Court of the District of Columbia.

United States of America, District of Columbia.

I, Joseph Y. Potts, Clerk of the Police Court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 10 inclusive, to be true copies of originals in cause No. 308,749 wherein the District of Columbia is plaintiff and Charles Robinson defendant, as the same remain upon the files and records of said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, the City of Washington, in said District, this 21st day of November, A. D. 1907.

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

12 UNITED STATES OF AMERICA, ss.:

The President of the United States to the Honorable Alexander R. Mullooney, Judge of the Police Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Police Court, before you, between District of Columbia, plaintiff, and Charles Robinson, defendant, information No 308,749, a manifest error hath happened, to the great damage of the said plaintiff as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Seth Shepard, Chief Justice of the said Court of Appeals, the 16th day of November, in the year of our Lord one thousand nine hundred and seven

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,

Clerk of the Court of Appeals of the District of Columbia.

Allowed by

SETH SHEPARD,

Chief Justice of the Court of Appeals

of the District of Columbia.

Endorsed on cover : District of Columbia police court. No. 1844. District of Columbia, plaintiff in error, *vs.* Charles Robinson. Court of Appeals, District of Columbia. Filed Nov. 21, 1907. Henry W. Hodges, clerk.

